

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

JEFFERY S. WARNER,

Plaintiff,

v.

Case Number 08-12820-BC
Honorable Thomas L. Ludington

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

_____/

**ORDER GRANTING PLAINTIFF'S APPLICATION
FOR ATTORNEY'S FEES AND COSTS**

Plaintiff Jeffery S. Warner filed a complaint in the United States District Court for the Eastern District of Michigan, Southern Division, on July 2, 2008, challenging the denial of his application for disability benefits by Defendant Commissioner of Social Security. Dkt. # 1. The complaint was referred to Magistrate Judge Charles E. Binder pursuant to 28 U.S.C. § 636(b)(1) [Dkt. # 3], and on January 6, 2009 Plaintiff filed a motion for summary judgment. Dkt. # 11. On April 30, 2009, pursuant to both parties' stipulation, this Court entered an order under sentence four of 42 U.S.C. § 405(g) remanding the case for further administrative proceedings. Dkt. # 20.

Now before the Court is Plaintiff's July 28, 2009 motion for attorney fees filed pursuant to 28 U.S.C. § 2412(a) & (d). Under the statute, the Court "shall" award attorney fees and costs to the "prevailing party" in a civil action against the United States unless the government's position was not "substantially justified" or other "special circumstances" would make the award of fees "unjust." *Id.* Here, Plaintiff is the "prevailing party" and his application for attorney fees is timely because the Court's order remanding the case for further administrative review constitutes a final judgment and the time to appeal that order has expired. *See Schalala v. Schaefer*, 509 U.S. 292, 297 &

300–301 (1993). Defendant indicated in its response that it did not object to the award of attorney fees.

Accordingly, it is **ORDERED** that Plaintiff's application for attorney's fees [Dkt. # 21] is **GRANTED**. Plaintiff is awarded \$3,427.40 in attorney fees and costs to be paid in accordance with the procedures set forth in 28 U.S.C. §§ 2412(c)(1) & 2414. It is further **ORDERED** that the hearing scheduled for September 9, 2009 is **CANCELLED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: August 14, 2009

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail on August 14, 2009.

s/Tracy A. Jacobs
TRACY A. JACOBS